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UNCLAS SECTION 01 OF 13 RANGOON 000033

SIPDIS

STATE FOR EAP/MLS; EEB/CBA
COMMERCE FOR JEAN KELLEY AND ERIN SULLIVAN
PACOM FOR FPA
TREASURY FOR OASIA: SCHUN

E.O. 12958: N/A

TAGS: [OPIC](#) [KTDB](#) [USTR](#) [ECON](#) [EFIN](#) [EINV](#) [ETRD](#) [BM](#)
SUBJECT: BURMA: 2009 INVESTMENT CLIMATE STATEMENT

REF: 08 State 119784

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11. Per reftel, this is Embassy Rangoon's submission for the 2009 Investment Climate Statement.

Preface

12. U.S. Investment Subject to Sanctions: On May 20, 1997, by Executive Order 13047, the President imposed economic sanctions prohibiting new investment by U.S. persons or entities in Burma (Myanmar), based on the determination that the Government of Burma had committed large-scale repression of the country's democratic opposition. The Cohen-Feinstein Amendment to the Foreign Operations Act of 1997 forms the legal basis for the investment ban. The U.S. government reviews its sanctions policy annually. Since imposing the investment ban, the U.S. Government has found no measurable progress toward political liberalization in Burma and the sanctions have been renewed annually.

13. Prior to the imposition of the investment ban, many prominent U.S. investors had already withdrawn from Burma due to a hostile investment climate and disappointing returns. An active anti-Burma consumer movement in the United States and Europe also put investors' corporate images at risk. Current U.S. federal sanctions prohibit new investment, but allow companies invested in Burma prior to May 20, 1997 to maintain their investments. Very few companies have elected to do so.

14. In 2003, the President signed into law the Burmese Freedom and Democracy Act (BFDA), and issued an accompanying Executive Order barring the import of Burmese products into the United States. The 2003 sanctions also prohibited U.S. persons from providing financial

services to Burma, and seized the assets of certain Burmese entities who provide substantial support for the regime.

¶5. In September 2007, in the wake of the Burmese government's longstanding oppression of the Burmese people and its use of violence against peaceful demonstrators in the so-called "Saffron Revolution," the President designated an additional 14 senior Burmese government officials as subject to an asset block under Executive Order 13310. In October 2007, the President announced Executive Order 13348, which expands the authority to block assets to individuals who are responsible for human rights abuses and public corruption, as well as those who provide material and financial support to the regime. To date, there are more than 80 individuals and 100 entities on the targeted U.S. sanctions list.

¶6. In July 2008, the President signed into law the "Tom Lantos Block Burmese Junta's Anti-Democratic Efforts" (JADE) Act. This law codified into U.S. statute sanctions and visa bans of the above-mentioned Executive Orders and Proclamations. Additionally, the law bans the import of jadeite and rubies mined or extracted in Burma, as well as articles of jewelry containing Burmese jade and rubies into the United States, regardless of the where the shipment originates from.

¶7. U.S. law allows U.S. firms to export to Burma, with some exceptions.

Openness to Foreign Investment

¶8. To attract new foreign investment, the Burmese government enacted the Foreign Investment Law (FIL) on November 30, 1988. The priorities for foreign investment, according to the FIL, are:

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- promotion and expansion of exports;
- exploitation of natural resources that require heavy investment;
- acquisition of high technology;
- support for production and services requiring large amount of capital;
- expansion of employment opportunities;
- development of facilities that would reduce energy consumption;
- and,
- regional development.

¶9. According to the State-Owned Economic Enterprises Law, enacted in March 1989, state-owned enterprises have the sole right to carry out the following economic activities:

- extraction of teak and sale of the same in the country and abroad;
- cultivation and conservation of forest plantations, with the exception of village-owned firewood plantations cultivated by the villagers for their personal use;
- exploration, extraction, sale, and production of petroleum and natural gas;
- exploration, extraction, and export of pearls, jade and precious stones;
- breeding and production of fish and prawns in fisheries which have been reserved for research by the government;
- postal and telecommunications services;
- air transport and railway transport services;
- banking and insurance services;
- broadcasting and television services;
- exploration, extraction, and exports of metals;
- electricity generating services, other than those permitted by law to private and cooperative electricity generating services; and,
- manufacturing of products relating to security and defense.

¶10. The Myanmar Investment Commission (MIC), "in the interest of the State," can make exceptions to this law. The MIC has granted some exceptions in the areas of banking (for domestic investors only), mining, petroleum and natural gas extraction, and air services. As with all major political and economic decisions, this discretion lies solely with the Cabinet and senior generals of the

ruling junta.

¶11. According to the FIL, the MIC must review all potential investment, both foreign and domestic. Due to accusations of corruption within the MIC, the ruling State Peace and Development Council (SPDC) sharply reduced the MIC's influence in 1999. Potential investors must still work through the MIC, but it has lost most of its decision-making authority. Interested foreign investors must submit proposals through the MIC, which obtains the final approval from either the Cabinet (chaired by Prime Minister General Thein Sein, who, it is believed, must also obtain clearance from SPDC Chairman Senior General Than Shwe) or the Trade Policy Council (TPC, chaired by SPDC Secretary (1) Lt. General Thiha Thura Tin Aung Myint Oo). The Cabinet and the TPC have the same membership, so authorities choose the decision-making body on a case-by-case basis. Although the MIC has no power to protect foreign companies, there is no evidence that the MIC overtly discriminates against foreign investors. Bureaucratic red tape, arbitrary regulation changes and endemic government corruption, however, continue to pose serious obstacles for all potential investors.

¶12. Once the government grants permission to invest, a foreign company must get a "Permit to Trade" - essentially a business license - from the Ministry of National Planning and Economic Development's Directorate of Investment and Companies Administration

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(DICA).

¶13. If a company has the "Permit to Trade", it may, in theory, use the permit to get resident visa status, to lease cars and real estate, and to obtain new import and export licenses from the Ministry of Commerce. The government has had a de facto policy in place since the end of 2001 to only issue import licenses to those firms that are export earners. Companies without export earnings must purchase "export dollars" from another firm at an inflated exchange rate in order to apply for an import license. Some companies fraudulently transfer money between the accounts of export revenue earners to facilitate this process. Companies can also now use account transfers from Burmese seafarers and other Burmese workers in foreign countries for exports, as the government considers remittances to be export earnings. Since the government taxes these overseas remittances at a rate of 10 percent, many overseas workers remit their money home through informal networks. Since August 20, 2005, the high-level Trade Policy Council gives final approval for all import and export licenses.

¶14. In February 2002, a reversal of the government's "open door economy" policy came from a verbal directive outlawing the issuance of new "Permits to Trade" and renewal of existing permits for any trading firms owned by foreigners (or jointly owned by foreigners and Burmese). The government allegedly took this measure to promote local trading firms, but it has served only to further distort the local marketplace. The authorities have not published any official notice of this directive but they generally enforce it, including against foreigners who have tried to evade the directive by listing their company under the name of a Burmese colleague or friend. This decision has slowed the rate of new foreign investment and has disrupted the business of many foreign investors, forcing the closure of several foreign manufacturing firms. Since 2002, some foreign investors have attempted to do business by operating as local firms under the cover of Burmese partners, but some have faced legal action and difficulties in divesting.

¶15. The FIL allows FDI in a wholly foreign-owned venture or a joint venture (JV) with a Burmese partner (either private or state-owned). Sole proprietorships and partnerships are equally acceptable. The FIL requires that at least 35 percent of equity capital in all JVs and partnerships be foreign-owned. The minimum foreign investment required in practice, though not specified in the law, is \$500,000 for manufacturing investments, and \$300,000 for services in cash or in kind. These minimum amounts include cash-on-hand requirements in foreign currency (calculated at the official rate of exchange of roughly 6 kyat = US\$1, which is roughly 0.50% of the market exchange rate) of:

--300,000 kyat (US\$50,000) for a services company,
--500,000 kyat (US\$83,000) for a trading company (though the GOB
does not currently allow trading companies), and
--one million kyat (US\$166,666) for a manufacturer.

¶16. In June 2006, the Ministry of Finance and Revenue issued a notification for levying tax on profits gained by transferring assets of the companies conducting business in oil and gas sector as following rates:

Profit	Tax rate
(a) up to US\$100 million	40 percent
(b) Between US\$100 and \$150 million	45 percent
(c) Over US\$150 million	50 percent

These tax rates remained the same in 2008.

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¶17. The Burmese military uses its two trading companies, the Union of Myanmar Economic Holdings, Ltd. (UMEHL) and the Myanmar Economic Corporation (MEC), to dominate commercial activities. To set up a joint venture, foreign firms have reported that an affiliation with UMEHL or MEC proves useful to help them receive the proper business permits. Nonetheless, entering into business with UMEHL or MEC does not guarantee success for foreign partners. Some investors report that their Burmese partners are parasitic, make unreasonable demands, provide no cost-sharing, and sometimes force out the foreign investor after an investment becomes profitable.

¶18. In November 2005, the government moved Burma's administrative capital to the newly-constructed town of Nay Pyi Taw, located in a remote valley about 240 miles north of Rangoon. All official transactions, including import/export licenses, must be approved in Nay Pyi Taw. Although the majority of import/export procedures have not changed, several businesses have complained that the time and cost of obtaining licenses has increased since 2005. Currently, it takes up to one month for license approval. The Burmese Government, to offset the time lag for import/export approval, introduced in October 2007 a one-stop service in Rangoon for marine products and medicine licenses. For these products alone, import/export licenses are approved in two days.

Conversion and Transfer Policies

¶19. According to the Foreign Investment Law (FIL), investors in Burma are guaranteed the ability to repatriate profits after paying taxes. The law also provides that, upon expiry of the term of the contract, the investor can receive the amount to which he or she is entitled in the foreign currency in which the investment was made. Due to the current shortage of foreign exchange in Burma, however, foreign investors have encountered difficulties in legally transferring their net profits abroad. The Foreign Exchange Management Department of the Central Bank of Myanmar must give permission for all transfers abroad of foreign currency; it can take months for such a permit to be issued.

¶20. Burma's multiple exchange rates make conversion and repatriation of foreign exchange very complex and ripe for corruption. The official rate of approximately 6 kyat to the U.S. dollar is grossly overvalued. The government also issues Foreign Exchange Certificates (FEC) at a fixed rate of 1 FEC=1 USD, as Burmese law prohibits locals to hold U.S. dollars without a special license. Although the official exchange rate exists, it is not widely used. The Burmese Government condones the use of up to eight additional exchange rates, which vary by transaction. The most widely used exchange rate is the illicit market rate, which averaged 1195 kyat/1 USD in 2008. Although the FEC on paper is equivalent to 1 USD and thus should be worth the same in kyat, in reality, the FEC/kyat exchange rate is lower than the USD/kyat rate. After Cyclone Nargis devastated Burma in May 2008, the FEC/kyat exchange rate depreciated by 25 percent compared with the kyat/USD rate due to the influx of humanitarian assistance denominated in foreign currency. Only after the Burmese Government intervened in the market did the FEC/kyat rate return to near-parity with the kyat/USD

rate.

¶21. Companies generally unload their kyat earnings as quickly as possible. The government requires foreign companies to use dollars or FEC to pay rental charges and utility and telephone bills (charged at a rate that is often 10 times higher than what local firms are charged). The government allows foreign firms to deposit dollars in a state bank, but these firms can only withdraw funds in FEC in lieu of U.S. dollars.

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¶22. In Burma, only three state banks -- the Myanma Foreign Trade Bank (MFTB), the Myanma Investment and Commercial Bank (MICB), and the Myanma Economic Bank (MEB) -- are legally permitted to handle foreign exchange transactions. In practice, the MFTB and MICB handle the majority of these transactions. The MFTB primarily handles foreign currency transactions for government organizations, businesses, and private individuals, while the MICB primarily serves companies and joint ventures. MEB handles foreign currency transactions in the border trade regions.

¶23. U.S. government restrictions imposed in 2003 on the provision of financial services to Burma by U.S. banks severely disrupted the legal foreign trading system, which had long been primarily dollar-denominated. U.S. banks no longer offer any trade facilitation or correspondent banking services, making the use of letters of credit denominated in U.S. dollars problematic. Some traders and government banks have shifted to euros or Singapore dollars. As of July 29, 2003, the U.S. Government also froze the correspondent accounts of MEB, MFTB, and MICB in the United States, along with all other Government of Burma assets and property.

¶24. Private banks held a large share of domestic banking activity until February 2003, when a major banking crisis severely reduced the holdings of the private banking sector. The GOB did not permit these banks to deal in foreign exchange. Although the government allowed some smaller private banks to resume operations in 2004, the sector remains tightly restricted. There is no indication that, if the private banking system is revitalized, the Burmese Government would give private banks the right to deal in foreign currency.

Expropriation and Compensation

¶25. The Burmese FIL provides a guarantee against nationalization during the "permitted period" of investment. Nevertheless, the Burmese Government has forced a number of foreign firms in various sectors to leave the country during the 1990s because it did not honor the terms and conditions of investment agreements. The Embassy has no information on any recent nationalizations or expropriations of foreign firms.

Dispute Settlement

¶26. Private and foreign companies suffer major disadvantages in disputes with Burmese Government and quasi-government organizations. Foreign investors generally prefer to use the 1944 Arbitration Act, which allows for international arbitration. The Burmese Government usually tries to stipulate local arbitration in all contracts it signs with foreign investors. The military regime closely controls the entire legal system in Burma, and courts are neither independent nor impartial, so local arbitration is not reliable. Companies facing adverse administrative decisions have no recourse. Burma is not a member of the International Center for the Settlement of Investment Disputes, nor is it a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

¶27. The Attorney General's Office and the Supreme Court ostensibly control the legal system in Burma, but neither body is independent of the ruling regime. Burmese criminal and civil laws are modeled on British law introduced during Burma's colonial period, which ended in 1948. Every Township, State, and Division has its own law officers and judges. The regional commanders and military authorities at the township, state and divisional level, however,

have supreme de facto authority over judicial decisions at the local

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and state/division level.

¶28. There is no bankruptcy law in Burma.

¶29. Foreign companies have the right to bring cases to and defend themselves in local courts. As the military regime controls the courts tightly, foreign investors with conflicts with the local government and those whose business has been expropriated have little success obtaining compensation.

Performance Requirements and Incentives

¶30. Officially, companies covered under the FIL are entitled to a tax holiday for a period of three consecutive years. Under the FIL, the Myanmar Investment Commission (MIC) can extend this tax holiday. At the MIC's discretion, investors are also eligible for a number of other incentives including: accelerated depreciation of capital assets, a waiver of customs duties and taxes on imported machinery and spare parts during the period of construction, or a waiver of duties on imported raw materials during the first three years of commercial production. Although the MIC issues the permission, the TPC and the Cabinet make final decisions on these incentives and extensions.

¶31. There are no official performance requirements for new foreign investors in Burma, but the government does require investors to purchase local machinery and insurance (fire, marine, and personal liability). Unofficially, before approving an investment, the government often requires companies to commit to a certain level of exports. The government then requires compliance reports every three months, with evidence of export results or an explanation why goals were not met. There is no evidence that the Burmese Government has taken any action against firms that do not meet their initial export targets.

¶32. There is no requirement that foreign investors buy or hire from local sources. Technology transfer is not generally a pre-requisite for investment.

¶33. Any enterprise operating under the FIL or the Myanmar Companies Act must pay a 30 percent income tax. Withholding tax on royalties and interest is 15 percent for resident foreigners and 20 percent for non-resident foreigners. Tax collection in Burma is, in practice, extremely lax, but foreign investors are an easy target for cash-strapped tax authorities. Additionally, the Burmese Government requires foreign companies and individuals to pay bills in U.S. dollars or FEC at the official exchange rate; the government uses the official rate as a defacto tax on foreigners. The Burmese fiscal year ends March 31; tax returns are due by June 30.

Right to Private Ownership and Establishment

¶34. By law, foreigners may not own land in Burma, and may only rent property on a short-term basis, frequently for terms less than one year. Most real estate transactions in Burma require cash. Regular bank loans are difficult to obtain and are not available directly to foreigners.

¶35. A private entity can establish, buy, sell, and own a business only with the review and approval of the MIC (and, by proxy, the top regime leadership).

Protection of Property Rights

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¶36. Burma does not have adequate Intellectual Property Rights (IPR) protection. Patent, trademark, and copyright laws and regulations

are all deficient in regulation and enforcement. After Burma joined ASEAN in 1997, it agreed to modernize its intellectual property laws in accordance with the ASEAN Framework Agreement on Intellectual Property Cooperation. An IPR law, first drafted in 1994, still awaits government approval and implementation. A Committee for IPR Implementation, established in July 2004, has worked toward approval of a new law, with assistance from the World Intellectual Property Organization. The WTO has delayed required implementation of the Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement for Least Developed Nations until 2015.

¶37. The Government of Burma introduced a Patents and Design Law in 1946, but never brought it into force. Thus, the registration of patents and designs in Burma is still governed by the Indian Patents and Designs Act of 1911, enacted under British colonial rule.

¶38. The piracy of music CDs, video CDs, CD-ROMS, DVDs, books, software, and product designs is evident nationwide, especially in border regions and in the two major urban centers of Rangoon and Mandalay. Most consumers of IT products in Burma, both in the private sector and in government, use pirated software due in part to the unavailability of legal software. Many U.S. software companies decline to do business with Burma due to U.S. sanctions. Given the small number of local customers, poor state of the economy, and lack of infrastructure (e.g., unreliable electricity for manufacturing), piracy does not have a significant adverse impact on U.S. products.

¶39. Burma has no trademark law, although trademark registration is possible. Some firms place caution notices in local newspapers to declare ownership of their trademarks. After publication, the owners can take criminal and/or civil action against trademark infringers. Title to a trademark depends on use of the trademark in connection with goods sold in Burma. The British colonial government published a Copyright Act in 1914, but has never instituted a means to register copyrights. Thus, there is no legal protection in Burma for foreign copyrights.

Transparency of Regulatory System

¶40. Burma lacks regulatory and legal transparency. All existing regulations, including those covering foreign investment, import-export procedures, licensing, and foreign exchange, are subject to change with no advance or written notice at the whim of the regime's ruling generals. The country's decision-makers appear strongly influenced by their desire to support state-owned enterprises and meet the needs of the military-controlled Myanmar Economic Corporation (MEC) and Union of Myanmar Economic Holdings, Ltd. (UMHEL), as well as wealthy cronies. Even omens and fortune-tellers can play a role in their decisions. The government regularly issues new regulations with no advance notice and often provides no opportunity for review or comment by domestic or foreign market participants. The Burmese Government rarely publishes its new regulations and regulatory changes, preferring to communicate new rules verbally to interested parties and often refusing to follow up in writing. The government occasionally publishes selected new regulations and laws in the government-owned daily newspaper, "The New Light of Myanmar," as well as in "The Burma Gazette."

¶42. Burma's written health, environmental, tax, and labor laws do not impose a major burden on investment. However, the unpredictable

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nature of the regulatory and legal situation -- and irregular enforcement of existing laws -- makes investment in Burma extremely challenging without good -- and well-connected -- local legal advice.

Efficient Capital Markets and Portfolio Investment

¶43. Burma has no true equity or debt markets, and the average citizen does not have portfolio investments. Burmese authorities have stated in the past that the existence of capital markets is

essential for the development of a well-functioning financial system, and the Myanmar Economic Bank (MEB) and Japan's Daiwa Institute of Research Co. Ltd. established a joint venture -- the Myanma Security Exchange Centre Ltd. -- to set up a limited stock exchange. However, the exchange is moribund, with only two listed companies -- a small forestry joint venture and a small semi-government bank. A few Burmese companies sell bonds privately on a very small scale. Private companies, whether foreign or domestically controlled, are generally small in size, although there are a number of larger, highly profitable businesses that benefit from their close ties to the regime. Usually, a small number of people or entities, often within the same family, closely hold the business shares. There is no securities law.

¶44. The private banking system in Burma was frozen in February 2003 after a public scare and a run on private banks, and the subsequent decision by the government to avoid any bailouts. The crisis did not seriously affect state-owned banks and partially state-owned banks. Although some banks closed, other private banks resumed operations in 2004 with limited functions. Government restrictions have made it impossible for the largest private banks to take in many new deposits or to extend significant new loans, and have limited the maximum amount clients can withdraw each week. The Government of Burma has fixed interest on deposits at 12 percent; however, inflation ranges between 20-40 percent a year.

¶45. The Financial Action Task Force (FATF) removed Myanmar from its list of Non-Cooperative Countries and Territories in October 2006 in recognition of the government's efforts to better enforce its anti-money laundering regime, but advised the Burmese Government to enhance regulation of the financial sector, including the securities industry. FATF will continue to monitor Burma's progress on anti-money laundering in 2009.

¶46. In April 2004, the U.S. Treasury Department prohibited U.S. banks from doing business with Burmese banks or their overseas branches because of ongoing concerns of money laundering in Burma, specifically at Asia Wealth Bank (the largest pre-crash private bank) and Myanmar Mayflower Bank. The Government of Burma revoked the licenses of these two banks in March 2005 and, in August, closed a third bank suspected of laundering money, the Myanmar Universal Bank, for violations of the Financial Institutions Act. Currently, only six fully private and nine quasi-state banks operate, all under tight governmental restriction.

¶47. Foreign firms do not have access to bank loans, since the banks require collateral of land or real estate, neither of which foreigners can own in Burma. Since mid-2002, the government has forbidden the use of gold as collateral. Loans in kyat are available for local companies and individuals from state and private banks, although only to those who hold valid bank accounts. Interest rates are currently fixed at 17 percent per year. Most Burmese, who lack collateral and access to banks, turn to the informal sector for access to cash, often paying up to 30 percent interest a month on informal loans.

¶48. UN partners estimate that the inflation rate in 2008 was

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approximately 40 percent. Because of negative real interest rates and inadequate regulation and supervision, the private banking system remains unstable, forcing the majority of Burmese to save their money by buying gold stocks rather than putting their money in banks. Before the 2003 banking crisis, most private banks engaged in reckless lending and suffered from high levels of non-performing loans. Now, most are tightly regulated by the Central Bank and government regulations force them to be more conservative in policy.

While accurate statistics are not available, businessmen and bankers say that the quasi-government banks are regularly asked to bankroll the regime's pet projects and personal demands, and as a result may still have a large percentage of non-performing loans.

¶49. A 1990 banking law permitted foreign banks to open representative offices to serve as trade and commercial liaisons for local and foreign clients in Burma, but they were not allowed to conduct business for the local market. For a variety of reasons, including the 1997-98 Asian financial crisis, the local business climate, and the lack of liberalization of the Burmese banking

sector, only 13 (four branch offices and nine cooperated secretaries) of the original 49 authorized foreign banks retain a presence in Burma today. Only four of these offices are active; the others maintain observer status. Under U.S. law, U.S. persons and institutions may not provide financial services to Burma, except for humanitarian assistance.

¶50. In 2004, in the absence of a government policy, the Myanmar Accountants Council issued its own standard accounting system - the Myanmar Accounting Standards - based very closely on International Accounting Standards (IAS).

Political Violence

¶51. Burma experienced major political unrest in 1988, when the current military regime seized power and jailed/killed an undetermined number of Burmese citizens and democracy activists. In 1990, the military government refused to recognize the results of a parliamentary election overwhelmingly won by the pro-democracy opposition. Burma also experienced major student demonstrations in 1996, and other demonstrations occurred in August and September of 1998. In May 2003, government-affiliated thugs ambushed a convoy carrying pro-democracy opposition leader Aung San Suu Kyi in northwest Burma, killing or wounding dozens of pro-democracy activists.

¶52. Political unrest continued in 2007. Following a sharp increase in fuel prices on August 15, 2007, pro-democracy groups began a series of peaceful marches and demonstrations to protest the deteriorating economic situation in Burma. While these marches were quickly suppressed, as popular dissatisfaction spread, Buddhist monks began leading peaceful marches in several cities throughout the country. These marches grew quickly to include ordinary citizens, culminating in thousands of protestors in Rangoon on September 24. On September 25, the regime tried to stop the protests by imposing a curfew and banning public gatherings. Beginning on September 26, the regime initiated a violent crackdown, shooting, beating, and arbitrarily detaining thousands of monks, pro-democracy activists, and onlookers.

¶53. The regime confirmed the deaths of only 10 protestors, but some non-governmental organizations (NGOs) estimated the number of casualties to be much higher. In his December 7, 2007 report to the UN General Assembly, Special Rapporteur for Human Rights Paulo Sergio Pinheiro stated that there were over 30 fatalities in Rangoon associated with the September 2007 protests. In retribution for leading protest marches, monks were beaten and arrested, many monks were disrobed, and several monasteries were raided, ransacked, and

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closed. In addition to the more than 1,100 political prisoners whose arrests predate the September 2007 crackdown, another thousand or more were detained due to their participation in the recent protests. Activists continued to be arrested through December 2008.

¶54. There have been several explosions in Rangoon and other Burmese cities as recently as September 2008, normally with few fatalities. Authorities regularly claim to discover such devices at various locations throughout Burma. The most serious incident took place in May 2005 when three bombs exploded simultaneously in central Rangoon commercial areas, killing at least 23 civilians. In the past, the government has publicly blamed insurgents and opposition activists for some of these bombings, although officials have not produced any credible evidence to back up these accusations. In most cases, no groups claim responsibility and no one is arrested after the bombings.

¶55. Sporadic anti-government insurgent activity continues in various locations, particularly near Burma's borders. These areas that surround central Burma have seen sporadic fighting between government forces and insurgent groups throughout the past 50 years. Popular unrest and violence remain possible throughout Burma.

¶56. In November 2008, the government began sentencing many political prisoners it had arrested over the course of the previous year to lengthy prison terms, in some cases up to 68 years. By year's end over 120 persons had been sentenced to prison including a

leading monk activist and several human rights and pro-democracy activists. Most prisoners were sentenced to terms of imprisonment of several decades based on accusations of unlawful association, illegally distributing print and video media, and allegations of destabilizing public security and the security of the state.

Corruption

¶57. Corruption is endemic in Burma. Transparency International rated Burma worst in the world in 2007 and second only to Somalia in 2008. Economists and businesspeople consider corruption the most serious barrier to investment and commerce in Burma. Because of a complex and capricious regulatory environment and extremely low government salaries, rent-seeking activities are ubiquitous. Very little can be accomplished, from the smallest transactions to the largest, without paying "tea money." As inflation increases and investment declines, this problem appears to be worsening.

¶58. Since 1948, corruption is officially a crime that can carry a jail term. However, the ruling generals apply the anti-corruption statute only when they want to take action against a rival or an official who has become an embarrassment - most notably in October 2004, when the SPDC arrested then-Prime Minister General Khin Nyunt and many of his colleagues and family members for corruption. In 2006, authorities arrested over 300 Customs officials, charging them with corruption. Most citizens view corruption as a normal practice and requirement for survival. The major areas where investors confront corruption are when seeking investment permission, in the taxation process, when applying for import and export licenses, and when negotiating land and real estate leases.

Bilateral Investment Agreements

¶59. Burma has signed several bilateral investment agreements, also known as "Protection and Promotion of Investment" agreements, with the Philippines, China, Lao PDR, and Vietnam. These agreements have had little impact on enhancing incoming investment from other

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countries in the region. The Government of Burma continues to discuss the possibility of investment treaties with Thailand and Singapore.

OPIC and Other Investment Insurance Programs

¶60. Due to U.S. law, OPIC programs are not available for Burma. Burma is not a member of the World Bank's Multilateral Investment Guarantee Agency (MIGA).

Labor

¶61. In 1989, the United States withdrew Burma's eligibility for benefits under the Generalized System of Preferences (GSP), due to the absence of internationally recognized worker rights. Independent labor unions are illegal in Burma. Workers are not allowed to organize, negotiate, or in any other legal way exercise control over their working conditions. In some instances workers have gained minor benefits through direct work actions, especially for wage increases at private enterprises following a significant pay increase for civil servants in April 2006.

¶62. Although government regulations set a minimum employment age, wage rate, and maximum work hours, managers do not uniformly observe these regulations, especially in the private sector. The government often uses forced labor in its construction and commercial enterprises and for portage and military building. These labor practices are inconsistent with Burma's obligations under ILO Conventions 29 and 87. The ILO imposed sanctions against Burma in 2000 and has critically reviewed the forced labor situation in Burma at subsequent ILO Conferences and Governing Body meetings. In 2006 and 2007, the ILO Governing Board raised the possibility of bringing Burma to the International Court of Justice for its refusal to

address forced labor. The ILO continues to work with the Burmese Government on forced labor issues under the Supplementary Understanding on Forced Labor, which was signed in February 2007 and renewed for one year in February 2008. The United States strongly supports ILO monitoring in Burma.

¶63. Burma's labor costs are very low, even when compared to most of its Southeast Asian neighbors. Burmese over the age of 40, particularly those over 65 years of age, are generally well-educated, but the lack of investment in education by the military regime and the repeated closing of Burmese universities over the past 20 years have taken a toll on younger generations. Most in the 15-39 year old demographic group lack technical skills and English proficiency. Many older educated Burmese studied English in mission schools during the British colonial and early independence period. The military nationalized schools in 1964 and discouraged the teaching of English in favor of Burmese.

¶64. The government does not publish any unemployment figures. Anecdotal evidence and recent divestment by many foreign companies indicate a very high level of unemployment and underemployment in formal, non-agricultural sectors. The minimum wage is 500 kyat (roughly \$0.40) per day. An average worker in Burma earns about 500-1000 kyat (roughly \$0.40 to \$0.80) per day and the per capita GDP is \$334, according to the Economist Intelligence Unit.

Foreign-Trade Zones/Free Ports

¶65. The government has set aside 19 "industrial zones," large tracts of land surrounding Rangoon, Mandalay, and other major

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cities. These areas are, however, merely zoned for industrial use. They do not come with any special services or investment incentives. The GOB has developed a draft industrial zone law, which has yet to be approved.

¶66. There are no free trade zones in Burma.

Foreign Direct Investment Statistics

¶67. Note: Investment figures compiled by the Burmese Government include only investments approved by the Myanmar Investment Commission (MIC), only a fraction of which are realized. No statistics exist as to disinvestment. The figures do not include investments outside of MIC's purview, such as many small and medium Chinese-financed projects. Since the end of 2003, the MIC has stopped making its investment figures available publicly.

¶68. According to government figures, at the end of November 2008, cumulative foreign investment approved by the MIC totaled 422 projects, valued at \$15.7 billion. This is 6.6 percent higher than the cumulative total listed at the end of November 2007.

¶69. Extrapolating from the latest government statistics on FDI flow for Burmese FY 2008-2009 (April through August 2008) published by the Central Statistical Office (CSO), the U.S. Embassy estimates a 462 percent year-on-year increase in the value of new FDI approvals (\$969.996 million) compared with total new investment approvals in FY 2007-08 (\$172.720 million). FY2008-09 proposed investments from China (\$855.996 million in mining), Russia (\$94 million in oil and gas), and Vietnam (\$20 million in oil and gas) were approved by MIC.

The approved FDI amount significantly rose in July 2008, with the announcement of China's planned investment of \$855.996 million in the mining sector.

¶70. The vast majority of approved new investment since 1997 has come from Asian countries. Western countries have largely stayed away from the Burmese market, largely due to the abysmal investment climate, including an absence of rule of law, economic mismanagement, endemic corruption, and U.S. and EU sanctions limiting investment. New U.S. investment ceased in 1997 when the U.S. government imposed an investment ban.

¶71. According to GOB statistics, in stock terms, the United States is still counted as the eighth largest foreign investor in Burma,

with 15 approved projects totaling \$244 million predating the 1997 investment ban. U.S. investment approved prior to May 1997, which was grandfathered under U.S. investment sanctions, is largely concentrated in oil and natural gas exploration.

¶72. Major non-U.S. foreign investors in Burma are concentrated in resource extraction and include: Petronas (Malaysia), Total (France), PTTEP (Thailand), Danford (Australia), Chinese National Petroleum Corporation (CNPC) (PRC), China National Offshore Oil Corporation (CNOOC) (PRC), Shin Satellite (Thailand), Keppel Land (Singapore), Daewoo (South Korea), Ivanhoe Copper Mining (Canada), China National Construction and Agricultural Machinery Import and Export Co. (PRC), and the China International Trust and Investment Corporation (PRC).

¶73. Government statistics do not report external investments made by Burmese companies. However, there is anecdotal information that some wealthy Burmese individuals and small family businesses have made investments in China and in neighboring ASEAN countries.

FOREIGN INVESTMENT APPROVALS AS OF 11/30/2008 BY SECTOR

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(US\$ million)

Approved Sector No.	In percent of Amount	Total Approved Amount
Power	2 6,311.222	40.17
Oil and Gas 88	3,357.478	21.37
Manufacturing 154	1,629.128	10.37
Mining 60	1395.886	8.88
Real Estate 19	1,056.453	6.72
Hotels and Tourism 43	1,034.561	6.58
Livestock/ Fisheries 25	324.358	2.06
Transport/Comms 16	313.272	1.99
Industrial Estates 3	193.113	1.24
Construction 2	37.767	0.25
Agriculture 4	34.351	0.22
Other Services 6	23.686	0.15
Total 422	14,736.279	100.00

CUMULATIVE FOREIGN INVESTMENT APPROVALS AS OF 11/30/2008 BY COUNTRY

(US\$ Million)

Country No. Approved Amount

Thailand 58	7,391.843
U.K.* 50	1,860.954
Singapore 72	1,553.213
China 28	1,331.439
Malaysia 33	660.747
Hong Kong 31	504.218
France 2	469.000
U.S.A. 15	243.565
Republic of Korea 37	243.308
Indonesia 12	241.497
The Netherlands 5	238.835
Japan 23	213.004
India 5	189.000
Philippines 2	146.667
Russia 2	94.000
Australia 14	82.080
Austria 2	72.500
Canada 14	39.781
Mauritius 2	30.575
Panama 1	29.101
Vietnam 2	23.649
Germany 2	17.500
Demark 1	13.370
Cyprus 1	5.250
Macau 2	4.400

Switzerland	1	3.382
Bangladesh	2	2.957
Israel	1	2.400
Brunei Darussalam	1	2.040
Sri Lanka	1	1.000
Total	422	15,711.275

*Inclusive of enterprises incorporated in British Virgin Islands, Bermuda, and the Cayman Islands. Actual Foreign Direct Investment from the UK proper totaled USD 0.00 through November 2008.